

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MALCOLM THOMAS §
v. § CIVIL ACTION NO. 5:14cv2
YONNIE JAMES, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS AVILA, MAY, MERCHANT, AND PEACOCK'S
MOTION TO DISMISS

The Plaintiff Malcolm Thomas, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are TDCJ Executive Director Brad Livingston, Telford Unit Warden Dawn Merchant (also known as Dawn Grounds), Sgt. Kelley May, grievance investigator Tonya Peacock, and officers Christopher Avila and Yonnie James.

The Defendants Avila, May, Peacock, and Merchant filed a motion to dismiss. After review of this motion and the Plaintiff's amended complaint, the Magistrate Judge issued a Report recommending that the motion be granted as to the Defendants Merchant and Peacock, and as to the Plaintiff's claims for monetary damages against all of the Defendants in their official capacities. The Magistrate Judge further recommended that the claims against Livingston be dismissed as frivolous and that the motion to dismiss be denied as to the Defendants Avila and May.

No objections were filed to the Report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (ECF TXED 5:14-cv-2, 30) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion to dismiss (ECF TXED 5:14-cv-2, 29) filed by the Defendants Dawn Merchant and Tonya Peacock is GRANTED. The Plaintiff's claims against these parties are DISMISSED with prejudice and they are hereby terminated as parties to the lawsuit. It is further

ORDERED that the Plaintiff's claims for monetary damages against the remaining Defendants in their official capacities is DISMISSED as barred by the Eleventh Amendment. This shall not affect any claims for monetary damages against the Defendants in their individual capacities. It is further

ORDERED that the Plaintiff's claims against TDCJ Executive Director Brad Livingston are DISMISSED with prejudice as frivolous. Finally, it is

ORDERED that the motion to dismiss filed by the Defendants Kelly May and Christopher Avila, also contained in docket no. 29, is DENIED.

SIGNED this 4th day of August, 2015.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE